SECOND DIVISION
August 2, 2016

No. 1-14-2090

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 11 CR 19931
	)	
JUANTE PHILLIPS,	)	Honorable
	)	Raymond Myles,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE SIMON delivered the judgment of the court.
Presiding Justice Pierce and Justice Hyman concurred in the judgment.

O R D E R

¶ 1 *Held*: The trial court erred in allowing a police officer to testify to the contents of a police radio call, thus exceeding the scope of the course-of-investigation exception to the hearsay rule, and in relying on that content as evidence of the defendant's guilt. The defendant's conviction for drug possession is reversed and the case remanded for a new trial.

¶ 2 Following a bench trial, defendant Juante Phillips was convicted of possessing more than 1 gram but less than 15 grams of heroin (720 ILCS 570/401(c)(1) (West 2010)). The trial court sentenced defendant to four years in prison. On appeal, defendant contends that the trial court erred in allowing into evidence an anonymous tip described by the investigating officer and in

relying on that evidence to convict him. Defendant further argues that the State did not present sufficient evidence that he possessed narcotics because the officer's account was neither credible nor corroborated by other proof.

¶ 3 Defendant was charged with possession of between 1 and 15 grams of heroin with intent to deliver. Before trial, the defense filed a motion *in limine* asking the State be barred from introducing evidence of an anonymous tip received by Chicago police officer Oswaldo Ochoa. According to the motion, the person providing the tip reported seeing a black male holding a gun, wearing a black jacket, black pants, black shoes and a "green-teal with white colored hat" and "selling drugs and hiding the drugs at a pole at 1041 North Leamington" in Chicago.

¶ 4 Defense counsel argued that the substance of the tip should not be admitted into evidence and that the officer could only testify that he received a radio call preceding defendant's arrest. In denying the defense motion, the trial court stated:

> "Well, if it's not being offered for the matter of the truth asserted [*sic*], then I'll let it in because the officer indicated that after receiving the call or what was the tip, he had given [inaudible]. And I think it's admissible."

¶ 5 At trial, Officer Ochoa testified he had been a police officer for 13 years. At about 12:50 p.m. on November 3, 2011, he was at the 1000 block of North Leamington responding to a "call of a person with a gun and a person selling narcotics." When asked for a description of the suspect, defense counsel objected to that testimony as hearsay. That objection was overruled, and Officer Ochoa testified that he received a radio report with a "description of a male black, black jacket, wearing a white and teal hat, and [stating] that he was hiding drugs and a gun at the location of 1041 North Leamington."

¶ 6 Officer Ochoa arrived at the 1000 block of Leamington "a few minutes, maybe five minutes" after hearing the radio call. The officer saw defendant walking north near 1049 North Leamington. Officer Ochoa detained defendant with the assistance of another police unit at the scene.

¶ 7 Officer Ochoa walked to 1041 North Leamington, which he testified was a vacant residence. The officer testified that he "looked around the front underneath the porch by the fences" and retrieved a plastic bag containing 34 foil packages of suspect heroin. The officer showed the bag to defendant, telling him that "I found his dope, a street term [for] narcotics, at which point [defendant] told me, 'All right, I'll give you a gun if you let me go.' " Defendant was taken to the 15th District police station and placed under arrest. Officer Ochoa gave the suspect narcotics to another officer, who placed them into inventory.

¶ 8 Officer Ochoa testified that after defendant was advised of his *Miranda* rights, defendant repeated his statement that if the officers let him go, he would turn over his weapon. At trial, Officer Ochoa identified the teal and white hat defendant wore at the time of his arrest.

¶ 9 On cross-examination, Officer Ochoa testified that no weapon was recovered from defendant and that he did not see defendant engage in a suspected drug transaction or see him at 1041 North Leamington before detaining him. When asked if anyone else was present when he approached defendant, the officer stated he "only remember[ed] seeing the defendant" and that defendant was the only person "[t]hat I remember that matched the description with that hat and the jacket." The officer stated he picked the bag of suspect heroin up from the ground. Officer Ochoa said he did not ask defendant about a gun. Police recovered $14 from defendant.

¶ 10 Chicago police officer Timothy Gilliland testified that he inventoried the narcotics after receiving the bag from Officer Ochoa. The parties stipulated that 23 of the 34 packets were tested and contained heroin and that the weight of those packets was 5.1 grams. The State entered into evidence the bag of narcotics and a photograph of 1041 North Leamington. The defense presented no evidence.

¶ 11 In finding defendant guilty of possession of a controlled substance, the court stated:

> "Okay, Court has heard testimony from both officers, and Court heard evidence that on November 3, 2011, approximately 12:50 p.m., that the officers were on duty in the area of 1000 block on North Leamington. Officer Ochoa stated that he had been a Chicago police officer for roughly 13 years, and he said that he responded to a report of a man with a gun, per police radio, he was allegedly selling drugs, hiding drugs.
>
> There's a description given, a description matching the defendant who the officer saw walking down the street. The officers approached the defendant to further investigate [] the tip they had gotten. They did not have enough to arrest the defendant because this is just an unsubstantiated tip from an unknown person, so they went to check out the situation, to make a further investigation as they should.
>
> They stopped the defendant, and the officers indicated that he [*sic*] searched the area *** where they [were] told [] the defendant was at. Searched the area, and they found drugs, found drugs that were presented to the defendant. The drugs were shown to the defendant, and the defendant's statement was that, 'If you let me go, I'll show you a gun – I'll give you a gun.' When confronted with the drugs.

> There is a reasonable inference that you can draw from the – if you look at the totality of the circumstances and the totality of the conversation and the context for which everything was said and done, the officer said, 'I found your dope.' The defendant alleged said[,] 'All right.' Court can infer that the defendant was saying, okay, if you let me go, although you got me with the drugs, I'll give you a gun, there was a reference to a gun by the radio dispatch. So there's a description matching the defendant, drugs, which the defendant has by inference indicated were his, and then there's a gun that the defendant says he can give the police officers, that a gun [*sic*] was mentioned in the radio report.
>
> And, further *** the defendant was *Miranda*-ized and also indicated that he had knowledge of the transaction."

¶ 12 Noting that defendant had been charged with possession with intent to deliver, the court found that the State did not prove the element of intent to deliver beyond a reasonable doubt. The court found defendant guilty of the lesser included offense of possession of a controlled substance based on the State's proof of defendant's constructive possession of the drugs.

¶ 13 As a threshold matter, we address the parties' disagreement as to the standard of review to be applied in this case. Defendant contends that his conviction should be reversed and this case remanded for a new trial because the trial court relied on inadmissible hearsay that violated his right to confront witnesses against him under the confrontation clause of the sixth amendment. Defendant asserts he has thus raised a constitutional claim under *Crawford v. Washington*, 541 U.S. 36 (2004), to be reviewed *de novo*. We agree with the State that a *de novo* standard is not warranted here. This appeal involves a challenge to the trial court's ruling on a motion *in limine*,

which involves the admission or exclusion of evidence and is therefore reviewed for an abuse of discretion. *People v. Patterson*, 2014 IL 115102, ¶ 114; *People v. Torres*, 2015 IL App (1st) 120807, ¶ 54.

¶ 14 Defendant argues that Officer Ochoa's testimony regarding the contents of the anonymous tip relayed in the radio call went beyond merely demonstrating why the officer proceeded to the address on North Leamington. Defendant points out that the officer testified to a physical description of the suspect and his clothing, and he contends the erroneous admission of that evidence was not harmless because the trial court expressly relied on the officer's testimony in finding him guilty.

¶ 15 Hearsay is a statement, other than one made by the declarant while testifying at trial or in a hearing, that is offered into evidence to prove the truth of the matter asserted. Ill. R. Evid. 801(c) (eff. Jan. 1, 2011). Hearsay is generally inadmissible unless it falls under a recognized exception. *People v. Caffey*, 205 Ill. 2d 52, 88 (2001). The course-of-investigation exception to hearsay allows police officers to testify to out-of-court statements that are offered not for their truth but are instead offered to show why the officer took certain actions, "where such testimony is necessary to fully explain the State's case to the trier of fact." *People v. Simms*, 143 Ill. 2d 154, 173 (1991); *People v. Temple*, 2014 IL App (1st) 111653, ¶ 58.

¶ 16 Pursuant to that exception, a police officer does not violate the hearsay rule by testifying about a conversation with an individual and his resulting steps taken in his investigation of the crime. *People v. Hunley*, 313 Ill. App. 3d 16, 33 (2000). The course-of-investigation exception is generally exceeded when the police officer provides the substance of any out-of-court statement heard during his investigation that goes to "the very essence of the dispute" at issue. *People v.*

Jones, 153 Ill. 2d 155, 160 (1992); *Hunley*, 313 Ill. App. 3d at 33-34. Words go to "the very essence of the dispute" when they indicate that the defendant was the person who committed the crime. *Jones*, 153 Ill. 2d at 160.

¶ 17 Therefore, a police officer may testify about such a conversation as long as that testimony is not used to prove the truth of the matter asserted in the conversation's content, namely the defendant's guilt of the charged offense. *People v. Williams*, 289 Ill. App. 3d 24, 31 (1997). For example, our supreme court held in *People v. Gacho*, 122 Ill. 2d 221, 248 (1988), that it was permissible for a police officer to testify that after speaking to a witness, he went in search of the defendant, by which it could be inferred that the witness had identified the defendant. However, the supreme court held that the officer's testimony as to the substance of that conversation would have been inadmissible hearsay. *Id*. at 247-48.

¶ 18 Here, when the trial court was asked to rule on the defense motion *in limine* to exclude the anonymous tip from evidence, the court denied the motion, stating the evidence was "admissible" and that the court would "let it in" if it was not being offered for the truth of the matter asserted. The State subsequently was allowed to introduce Officer Ochoa's description of the contents of the radio call over defense counsel's objection. Those rulings constituted an abuse of the trial court's discretion because the substantive facts in the radio call were used to connect defendant with this offense.

¶ 19 Specifically, Officer Ochoa described at trial the contents of the anonymous tip relayed to him in the radio call. Over a defense objection, Officer Ochoa testified that he received a radio report of a "description of a male black, black jacket, wearing a white and teal hat and [stating] that he was hiding drugs and a gun at the location of 1041 North Leamington." The officer then

testified he observed defendant walking near 1049 North Leamington and asked him about the narcotics recovered from 1041 North Leamington. Thus, the officer's testimony as to the substance of the radio call exceeded a mere explanation of the course of the police investigation; the officer identified defendant as the person who committed the crime.

¶ 20 The State contends that the trial court properly allowed the testimony regarding the radio call to demonstrate the officer's subsequent actions. However, Officer Ochoa's testimony exceeded a showing of why he proceeded to the area of North Leamington after receiving the call. The contents of the radio call were used to connect defendant to the charged crime. The prosecutor remarked in rebuttal closing argument that Officer Ochoa approached defendant because defendant was "matching the right description" relayed in the radio call. The substance of the radio report went directly to the question of whether defendant was the person who committed the crime.

¶ 21 Furthermore, because the contents of the radio report were inadmissible hearsay, they could not be used as substantive evidence against defendant. See *People v. Simpson*, 2015 IL 116512, ¶ 27. The record refutes the State's assertion that the trial court stopped short of using the contents of the radio call to find defendant guilty. The trial court expressly referred to the contents of the radio call, noting that Officer Ochoa responded to a report of a man hiding drugs and a gun and that defendant fit the description given in the radio report. Therefore, the record establishes that the trial court used the contents of the radio report, including the physical description of the suspect, as substantive evidence in convicting defendant.

¶ 22 We next consider the effect of the admission of that evidence. The admission of hearsay testimony is deemed to be harmless error if there is no "reasonable possibility the verdict would

have been different had the hearsay been excluded." *People v. Garmon*, 394 Ill. App. 3d 977, 989 (2009), citing *People v. McCoy*, 238 Ill. App. 3d 240, 249 (1992) (admission of hearsay by a police officer that included the substance of a conversation constituted harmless error where other witnesses testified to same evidence). Here, after being confronted with the bag of narcotics recovered from the subject address, defendant admitted to Officer Ochoa that he would "give [the officer] a gun if you let me go." Although defendant's remarks can be seen as an admission to possessing the bag after being confronted by the officer, it is also reasonable that defendant made the offer because he believed he was going to be charged with possession of the drugs that were not found on his person. Thus, we cannot conclude that a reasonable likelihood exists that the result of the proceeding would not have been different absent the description contained in the radio call. Unlike in *McCoy*, the information testified to by Officer Ochoa was not admitted in any other form.

¶ 23 Accordingly, defendant's conviction is reversed and this case is remanded for a new trial.

¶ 24 Reversed and remanded.